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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 HAWTHORNE STREET
SAN FRANCISCO, CA 94105

In the Matter of:

Rockford Corporation

Respondent.

Docket No. EPCRA-09-2007-0029

COMPLAINT AND NOTICE OF
OPPORTUNITY FOR HEARING

PRELIMINARY STATEMENT

This is a civil administrative action instituted pursuant to Section 325(c) of Title III of the Superfund Amendments and Reauthorization Act, 42 U.S.C. §§ 11001 et seq., also known as the Emergency Planning and Community Right-to-Know Act of 1986 ("EPCRA"), for violation of Section 313 of EPCRA, 42 U.S.C. § 11023, and the federal regulations promulgated to implement Section 313 at 40 C.F.R Part 372. Complainant is the Director of the Communities and Ecosystems Division, United States Environmental Protection Agency, Region IX ("EPA"), who has been duly delegated the authority to bring this action. Respondent is Rockford Corporation. This Complaint and Notice of Opportunity for Hearing ("Complaint") serves as notice that Complainant finds that Respondent violated Section 313 of EPCRA, 42 U.S.C. § 11023, and the federal regulations promulgated to implement Section 313 at 40 C.F.R Part 372.

APPLICABLE STATUTORY AND REGULATORY SECTIONS

1. Pursuant to Sections 313 and 328 of EPCRA, 42 U.S.C. §§ 11023 and 11048, EPA promulgated the Toxic Chemical Release Reporting: Community Right-to-Know Rule at 40 C.F.R. Part 372.

2. Section 313(a) of EPCRA, as implemented by 40 C.F.R. § 372.30, provides that an owner or operator of a facility that meets the criteria set forth in EPCRA Section 313(b) and 40 C.F.R. § 372.22, is required to submit annually to the Administrator of EPA and to the State in which the facility is located, no later than July 1st of each year, a toxic chemical release inventory reporting form (hereinafter "Form R") for each toxic chemical listed under 40 C.F.R. § 372.65 that was manufactured, processed or otherwise used at the facility during the preceding calendar year in quantities exceeding the thresholds established under EPCRA Section 313(f) and 40 C.F.R. §§ 372.25 and 372.28.

3. Section 313(b) of EPCRA and 40 C.F.R. § 372.22 provide that the requirements of Section 313(a) and 40 C.F.R. § 372.30 apply to an owner and operator of a facility that has 10 or more full-time employees; that is in a Standard Industrial Classification major group codes 10 (except 1011, 1081, and 1094), 12 (except 1241), 20 through 39; industry codes 4911, 4931, or 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce), or 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C.

1 §6921 et seq.), or 5169, 5171, or 7389 (limited to facilities
2 primarily engaged in solvent recovery services on a contract or
3 fee basis); and that manufactures, processes, or otherwise uses
4 one or more toxic chemicals listed under Section 313(c) of EPCRA
5 and 40 C.F.R. § 372.65 in quantities in excess of the applicable
6 thresholds established under EPCRA Section 313(f) and 40 C.F.R.
7 §§ 372.25 and 372.28.

8 GENERAL ALLEGATIONS

9 4. Respondent is a "person" as that term is defined by
10 Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

11 5. At all times relevant to this Complaint, Respondent was
12 an owner and operator of a "facility," as that term is defined by
13 Section 329(4) of EPCRA, 42 U.S.C. § 11049(4) and 40 C.F.R.
14 § 372.3, which is located at 546 S. Rockford Drive, Tempe,
15 Arizona (hereinafter "Facility").

16 6. At all times relevant to this Complaint, the Facility
17 had 10 or more "full-time employees," as that term is defined at
18 40 C.F.R. § 372.3.

19 7. The Facility is classified in Standard Industrial
20 Classification code 3651, which falls within the Standard
21 Industrial Classification code 36.

22 COUNT I

23 **Failure to File Timely Form R for Lead Compounds for Calendar** 24 **Year 2002**

25 8. Paragraphs 1 through 7 are realleged and incorporated
26 herein by reference.

27 9. During calendar year 2002, Respondent processed
28

1 approximately 21,917 pounds of lead compounds, a chemical
2 category listed under 40 C.F.R. § 372.65.

3 10. The quantity of lead compounds that Respondent processed
4 at the Facility during calendar year 2002 exceeds the established
5 threshold of 100 pounds set forth at 40 C.F.R. § 372.28.

6 11. Respondent failed to submit a Form R for lead compounds
7 to the EPA Administrator and to the State of Arizona on or before
8 July 1, 2003.

9 12. Respondent's failure to submit a timely Form R for lead
10 compounds that Respondent processed at the Facility during
11 calendar year 2002 constitutes a violation of Section 313 of
12 EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

13 COUNT II

14 **Failure to File Timely Form R for Lead Compounds for Calendar**
15 **Year 2003**

16 13. Paragraphs 1 through 7 are realleged and incorporated
17 herein by reference.

18 14. During calendar year 2003, Respondent processed
19 approximately 25,996 pounds of lead compounds, a chemical
20 category listed under 40 C.F.R. § 372.65.

21 15. The quantity of lead compounds that Respondent processed
22 at the Facility during calendar year 2003 exceeds the established
23 threshold of 100 pounds set forth at 40 C.F.R. § 372.28.

24 16. Respondent failed to submit a Form R for lead compounds
25 to the EPA Administrator and to the State of Arizona on or before
26 July 1, 2004.

1 17. Respondent's failure to submit a timely Form R for lead
2 compounds that Respondent processed at the Facility during
3 calendar year 2003 constitutes a violation of Section 313 of
4 EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. Part 372.

5 **COUNT III**

6 **Failure to File Timely Form R for Lead Compounds for Calendar**
7 **Year 2004**

8 18. Paragraphs 1 through 7 are realleged and incorporated
9 herein by reference.

10 19. During calendar year 2004, Respondent processed
11 approximately 20,796 pounds of lead compounds, a chemical
12 category listed under 40 C.F.R. § 372.65.

13 20. The quantity of lead compounds that Respondent processed
14 at the Facility during calendar year 2004 exceeds the established
15 threshold of 100 pounds set forth at 40 C.F.R. § 372.28.

16 21. Respondent failed to submit a Form R for lead compounds
17 to the EPA Administrator and to the State of Arizona on or before
18 July 1, 2005.

19 22. Respondent's failure to submit a timely Form R for lead
20 compounds that Respondent processed at the Facility during
21 calendar year 2004 constitutes a violation of Section 313 of
22 EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. Part 372.

23 **PROPOSED CIVIL PENALTY**

24 Section 325(c) of EPCRA, 42 U.S.C. § 11045(c) and 40 C.F.R.
25 Part 19 authorize EPA to assess a penalty of up to \$27,500 for
26 each violation of Section 313 of EPCRA that occurred on or after
27 January 31, 1997 but before March 15, 2004 and up to \$32,500 for

1 each violation that occurred on or after March 15, 2004. Based
2 on the violations cited in this Complaint, on the nature,
3 circumstances, extent and gravity of the violations alleged, and
4 on the degree of Respondent's culpability, as set forth in the
5 Enforcement Response Policy for Section 313 of EPCRA dated August
6 10, 1992 (a copy of which is enclosed), EPA proposes that
7 Respondent be assessed the following civil penalty for the
8 violations alleged in this Complaint:

9 COUNT I

10 Failure to submit a timely Form R for lead compounds for calendar
11 year 2002:

12 Circumstance Level 1, Extent Level A \$ 27,500

13 COUNT II

14 Failure to submit a timely Form R for lead compounds for calendar
15 year 2003:

16 Circumstance Level 1, Extent Level A \$ 27,500

17 COUNT III

18 Failure to submit a timely Form R for lead compounds for calendar
19 year 2004:

20 Circumstance Level 1, Extent Level A \$ 32,500

21 **Total Penalty Proposed.....\$ 87,500**

22 **NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

23 You have the right to request a formal hearing to contest
24 any material fact set forth in this Complaint or to contest the
25 appropriateness of the proposed penalty. Any hearing requested
26 will be conducted in accordance with the Administrative Procedure
27 Act, 5 U.S.C. § 551 et seq., and the Consolidated Rules of

1 Practice Governing the Administrative Assessment of Civil
2 Penalties and the Revocation/Termination or Suspension of Permits
3 ("Consolidated Rules of Practice"), 40 C.F.R. Part 22. A copy of
4 the Consolidated Rules of Practice is enclosed with this
5 Complaint.

6 You must file a written Answer within thirty (30) days of
7 receiving this Complaint to avoid being found in default, which
8 constitutes an admission of all facts alleged in the Complaint
9 and a waiver of the right to a hearing, and to avoid having the
10 above penalty assessed without further proceedings. If you
11 choose to file an Answer, you are required by the Consolidated
12 Rules of Practice to clearly and directly admit, deny, or explain
13 each of the factual allegations contained in this Complaint to
14 which you have any knowledge. If you have no knowledge of a
15 particular fact and so state, the allegation is considered
16 denied. Failure to deny any of the allegations in this Complaint
17 will constitute an admission of the undenied allegation.

18 The Answer shall also state the circumstances and arguments,
19 if any, which are alleged to constitute the grounds of defense,
20 and shall specifically request an administrative hearing, if
21 desired. If you deny any material fact or raise any affirmative
22 defense, you will be considered to have requested a hearing.

23 The Answer must be filed with:

24 **Regional Hearing Clerk**
25 **USEPA, Region IX**
26 **75 Hawthorne Street**
27 **San Francisco, CA 94105**

28 In addition, please send a copy of the Answer and all other

1 documents that you file in this action to:

2 Brian Riedel
3 Assistant Regional Counsel
4 Office of Regional Counsel (ORC-2)
5 USEPA, Region IX
6 75 Hawthorne Street
7 San Francisco, CA 94105

8 Mr. Riedel is the attorney assigned to represent EPA in this
9 matter. His telephone number is (415)972-3924.

10 You are further informed that the Consolidated Rules of
11 Practice prohibit any ex parte (unilateral) discussion of the
12 merits of any action with the Regional Administrator, Regional
13 Judicial Officer, Administrative Law Judge, or any person likely
14 to advise these officials in the decision of the case, after the
15 Complaint is issued.

16 **INFORMAL SETTLEMENT CONFERENCE**

17 EPA encourages all parties against whom a civil penalty is
18 proposed to pursue the possibility of settlement through informal
19 conferences. Therefore, whether or not you request a hearing,
20 you may confer informally with EPA through Brian Riedel, the EPA
21 attorney assigned to this case, regarding the facts of this case,
22 the amount of the proposed penalty, and the possibility of
23 settlement. **An informal settlement conference does not, however,**
24 **affect your obligation to file an Answer to this Complaint.**

25 **ALTERNATIVE DISPUTE RESOLUTION**

26 The parties also may engage in any process within the scope
27 of the Alternative Dispute Resolution Act, 5 U.S.C. § 581 et
28 seq., which may facilitate voluntary settlement efforts. Dispute
resolution using alternative means of dispute resolution does not

1 divest the Presiding Officer of jurisdiction nor does it
2 automatically stay the proceeding.

3 QUICK RESOLUTION


4 Instead of requesting an informal settlement conference or
5 filing an Answer requesting a hearing, you may choose to resolve
6 the proceeding by paying the specific penalty proposed in the
7 Complaint and filing a copy of the check or other instrument of
8 payment with the Regional Hearing Clerk within thirty (30) days
9 after receiving the Complaint. If you wish to resolve the
10 proceeding in this manner instead of filing an answer but need
11 additional time to pay the penalty, you may file a written
12 statement stating that you agree to pay the proposed penalty in
13 accordance with 40 C.F.R § 22.18(a)(1) with the Regional Hearing
14 Clerk within 30 days after receiving the Complaint. The written
15 statement need not contain any response to, or admission of, the
16 allegations in the Complaint. Within sixty (60) days after
17 receiving the Complaint, the full amount of the proposed penalty
18 must be paid. Failure to make such payment within this sixty-day
19 period may subject you to default. Upon receipt of payment in
20 full, the Regional Judicial Officer will issue a final order.
21 Payment by a respondent shall constitute a waiver of the
22 respondent's rights to contest the allegations and to appeal the
23 final order. In addition, full payment of the proposed penalty
24 shall only resolve Respondent's liability for Federal civil
25 penalties for violations and facts alleged in the Complaint and
26 does not affect the right of EPA or the United States to pursue
27

1 appropriate injunctive or other equitable relief or criminal
2 sanctions for any violations of law.

3 CONSENT AGREEMENT AND FINAL ORDER

4 EPA has the authority, where appropriate, to modify the
5 amount of the proposed penalty to reflect any settlement reached
6 with you in an informal conference or through alternative dispute
7 resolution. The terms of such an agreement would be embodied in
8 a Consent Agreement and Final Order. A Consent Agreement signed
9 by both parties would be binding as to all terms and conditions
10 specified therein when the Regional Judicial Officer signs the
11 Final Order.

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14 Date: 9-28-2007

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16 Jeff Scott
17 Acting Director
18 Communities and Ecosystems Division
19 U.S. EPA, Region IX
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CERTIFICATE OF SERVICE

I certify that the original and foregoing Complaint and Notice of Opportunity for Hearing, Docket Number EPCRA-09-2007-0029, was filed today with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, California 94105, and that a true and correct copy of:

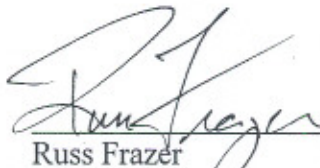
- (1) the Complaint;
- (2) the Consolidated Rules of Practice, 40 C.F.R. Part 22; and
- (3) the Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-To-Know Act (1986) and Section 6607 of the Pollution Prevention Act (1990) (amended), dated April 12, 2001

were placed in the United States Mail, certified mail, return receipt requested, addressed to the following:

Mark Matson
Vice President of Operations
Rockford Corporation
600 South Rockford Drive
PO Box 1860
Tempe, Arizona 85280-1860

Certified Return Receipt Article No: 7005 3110 0002 8247 1841

Dated: 9/28/09



Russ Frazer
TRI Program Enforcement Officer
Toxics Office, Community and Ecosystems Division
United States Environmental Protection Agency, Region IX